IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 928 OF 2002

Pappu Madan Chavan & ors. .. Appellants

versus

The State of Maharashtra .. Respondents

...

Mr.H.S. Venagavkar for the appellant.

Mr.D.P. Adsule, APP for respondent.

CORAM : V.M. KANADE, J

DATED : 13th September 2004.

ORAL JUDGEMENT :-

1. Heard the learned counsel appearing on behalf of the appellant and the learned APP appearing on behalf of the State.

2. The appellants are challenging the judgement and order passed by the Sessions Judge, Satara in Sessions Case no.120 of 2001 whereby the accused nos.1

and 3 were convicted for having committed an offence punishable under section 395 r/w 397 of the IPC and sentenced to undergo Imprisonment for 5 years and 7 years. Accused no.2 was however convicted u/s.412 of the IPC and sentenced to undergo RI for 5 years and to pay a fine of Rs.2,000/- and in default of payment of fine to undergo RI for six months.

3. The prosecution case is that the complainant Chandrabhaga Karande was residing at Village Pande wadi along with her husband and his parents and his sister and her sons. The incident in question took place on 26th February 2001 and at about 2.00 a.m, four unknown persons came in the room after opening the latch of the door, assaulted her husband and her father-in-law with an iron rod. They removed gold and silver ornaments, cash and clothes from the cupboard. The ornaments on the person of the complainant were also removed. The complainants mother-in-law was also given a blow on the hand by the iron rod and ran away with the booty. Thereafter, complaint was lodged. The injured were given medical treatment. Panchnama was made in which it revealed that property worth Rs.75,000/- was stolen by four persons. FIR was lodged with the Wai Police station. The investigation

was carried out by API Deepak Sawant. The accused were arrested. Gold and silver ornaments were recovered at the instance of the accused. Similarly, one Kodak camera was recovered at the instance of the accused no.3. The accused were identified in the Identification Parade. The blood of the accused and the injured was sent to Chemical Analyser and after the report was received, charge-sheet was filed.

4. The Sessions Court charged the accused under section 398, 397 and 412 of the IPC. The trial Court convicted all the accused. The learned counsel appearing on behalf of the appellant has taken me through the evidence on record as also the judgement of the trial Court. It is submitted by the learned counsel appearing on behalf of the appellant that even as per the version of the complainant, there was total darkness inside the room and it was not possible to see the accused. It is therefore, submitted that the case of the prosecution that the complainant and others had seen the accused and had identified them, was not proved beyond reasonable doubt. It was submitted that the accused were entitled to give benefit of doubt. It was further submitted that there was several lacunae in the Identification Parade which

was held. It was submitted that the trial Court erred in convicting the appellant nos.1, 3 and 8 since it was difficultto segregate the roles played by each of the accused. Since the FIR was lodged against four unknown persons, it is further submitted that the trial Court erred in convicting the appellant no.2 u/s.412 of the IPC. The learned APP appearing on behalf of the State at this stage submitted that prosecution had proved beyond reasonable doubt that the accused nos.1 and 3 had committed the offence with which they were charged. It is submitted that trial Court had given cogent reasons while coming to the conclusion that the said offence was committed by the accused nos.1 and 3 and that the accused no.2 had received stolen property. He submitted that therefore, conviction may be confirmed and the appeal may be dismissed.

5. I am unable to accept the submissions made by the learned counsel appearing on behalf of the appellant. In the present case, the prosecution has examined 12 witnesses. The prosecution has also relied on documentary evidence. The appellant nos.1 and 3 were seen by the complainant PW no.3 and also by her husband PW no.7 Shankar Karande and her

mother-in-law PW no.8 Parvati Karande. From the evidence of PW no.3 Chandrabhaga, she has stated that she heard the latch of the door was open and four persons entered the house. She has stated that the lights were on and therefore, she could see those four persons. She has also given the description of the four persons and has also described the clothes which they were wearing. She has stated that while going out of the house, the accused broke the tube light in the house. The contention of the learned counsel appearing on behalf of the appellant that there was total darkness and witnesses could not have seen the accused therefore, cannot be accepted. Her statement has been corroborated by her husband PW no.7 Shankar Karande and her mother-in-law PW No.8 Parvati. The accused have been identified in the Identification Parade. Apart from that, the medical certificate discloses that PW no.7 Shankar and his father and mother have suffered lacerated wounds, abrasions and contusions on various parts of the body. Even the medical evidence supports the ocular evidence of the three eye witnesses. Apart from this evidence, the evidence of recovery of gold and silver ornaments in their original form also goes against the accused. These ornaments have been identified by the

complainant. The test Identification Parade also has been held by the procedure laid down in a manner which has been established by PW no.9 Suryakant Mulik who was a pancha. Similarly, PW no.10 Chitrasen Shinde also has been examined. He was the Special Executive Magistrate who conducted the Test Identification Parade. Apart from the gold ornaments which were found in their original form, part of the gold was melted and was sold to accused no.2. PW no.6 was present in the shop has stated in his evidence that appellant no.2 has given the gold ornaments for the purpose of melting them. Thus, in my view, the prosecution has proved beyond reasonable doubt that the appellant nos.1 and 3 have committed offence with which they were charged. Similarly, so far as appellant no.2 is concerned, the prosecution has proved that he has received the stolen property.

6. The conviction therefore, is confirmed. However, so far as appellant no.2 is concerned, ie. original accused no.2, he has been sentenced to undergo RI for five years. The only evidence against him is the statement of PW no.6. The sentence in my view will have to be reduced. The sentence therefore, awarded to appellant no.2 - original accused no.2 is

reduced from 5 years to the period what has already undergone. The amount of fine is however, increased from Rs.20,000/- to Rs.25,000/-. Fine to be deposited within 8 weeks.

7. Appeal is partly allowed so far as appellant no.2 is concerned.

8. Appeal is disposed of in the above terms.

V.M. KANADE, J